Remarks

The Office Action mailed November 29, 2006 has been received and reviewed. No claims having been added, amended, or canceled herein, the pending claims are claims 71-87.

The specification has been amended to update the priority information.

Reconsideration and withdrawal of the rejections are respectfully requested.

Objection to the Specification

The Examiner objected to the specification, noting that the status of the prior applications needed to be updated. Applicants requested that the priority claim be inserted into the specification in the transmittal document submitted with the application on July 25, 2003. However, because it is not clear on the record that the requested amendment to the specification was entered, Applicants are amending the specification herein to add a new paragraph with the priority information. The specification having been amended to update the priority information, Applicants respectfully submit that the rejection has been rendered moot.

Reconsideration and withdrawal of the objection to the specification is respectfully requested.

The 35 U.S.C. §102 Rejection

The Examiner rejected claims 71-72, 74, 76, 78-79, and 82-84 under 35 U.S.C. §102(e) as being anticipated by Alt (U.S. Patent Application Publication No. 2004/0039438 A1). Applicants respectfully traverse the rejection.

Independent claim 71 recites, a prosthetic material including a scaffold having interconnecting, uniformly shaped pores; and an ingrowth matrix within the pores, wherein the ingrowth matrix comprises a concentration gradient of material. Applicants respectfully submit that Alt lacks, among other things, a teaching or suggestion of an ingrowth matrix that includes a concentration gradient of material.

Nonetheless, the Examiner asserted that "[t]he ingrowth matrix generally involves drugs incorporated in a biodegradable carrier (e.g., paragraph **0041**) and comprises a concentration gradient by virtue of the larger reservoir or repository toward the base layer **30**" (pages 2-3 of the Office Action mailed November 29, 2006). Applicants earnestly disagree with the Examiner's assertion.

Alt recites that "the tubular element or sidewall of the stent includes a first solid layer or thickness of a biocompatible metal, and a second porous layer or thickness which is composed of spherically-shaped metal particles bonded together to leave spaces between the particles" (paragraph 10). Alt further recites embodiments in which "the particles, which are sized in a range of diameters, are located with the larger diameter sizes adjacent and bonded to the surface of the first thickness and with those and progressively smaller diameter sizes bonded together up to the outermost region of the second thickness" (paragraph 11). Thus, Alt clearly teaches that the spaces between the particles (e.g., reservoirs or repositories) can be larger toward the base layer, as noted by the Examiner. Further, such larger reservoirs or repositories can clearly be filled with larger volumes of material. However, Applicants respectfully submit that it would be clear to one of skill in the art that merely changing the ***size*** of a reservoir or repository, and correspondingly changing the ***volume of material*** with which it is filled, does not change the ***concentration*** of the material within the reservoir or repository. Thus, Applicants respectfully submit that Alt fails to teach or suggest, among other things, a ***concentration gradient*** of material within the reservoir or repository.

Additionally, in a preferred embodiment, dependent claim 84 recites that "the pores are spherically shaped." Applicants respectfully submit that Alt fails to teach or suggest a pore having a shape "of or pertaining to a sphere" as suggested by the Examiner. Although Alt teaches a porous layer that is composed of metal particles that are "of or pertaining to a sphere" and bonded together, Applicants respectfully submit that it is the spaces between the particles

that are the "pores," and that the shapes of such spaces or pores are not "of or pertaining to a sphere."

For at least the reasons discussed herein above, Applicants respectfully submit that claims 71-72, 74, 76, 78-79, and 82-84 are neither taught nor suggested by Alt.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §102 are respectfully requested.

The 35 U.S.C. §103 Rejection

The Examiner rejected claims 73, 75, 77, 80, 81, and 85-87 under 35 U.S.C. §103(a) as being unpatentable over Alt (U.S. Patent Application Publication No. 2004/0039438 A1). Applicants respectfully traverse the rejection.

Claims 73, 75, 77, 80, 81, and 85-87 depend directly or ultimately from independent claim 71. Applicants respectfully submit that claims 73, 75, 77, 80, 81, and 85-87 are patentable over Alt for at least the reasons discussed herein above for the patentability of claims 71 and/or 84, in addition to reasons related to the additional subject matter recited in each.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a) are respectfully requested.

Summary

It is respectfully submitted that all the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted
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February 27, 2007
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CERTIFICATE OF ELECTRONIC FILING:
The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted electronically to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27th day of February, 2007, at 2:00 PM (Central Time)

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